

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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D.E.,

Plaintiff,

COMPLAINT

-against-

ROCKEFELLER UNIVERSITY a/k/a ROCKEFELLER
UNIVERSITY HOSPITAL f/k/a HOSPITAL OF THE
ROCKEFELLER INSTITUTE,

Index No. _____

Defendant.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, D.E., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

INTRODUCTION

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when he was a minor, was sexually assaulted by Dr. Reginald Archibald (hereinafter referred to as “Dr. Archibald”), a former professor and senior physician at Rockefeller University and its hospital, Rockefeller University Hospital. Dr. Archibald recruited children to become patients under the guise of conducting annual physicals and/or treating patients with endocrinological issues. An investigation conducted by Rockefeller University revealed that Dr. Archibald conducted “examinations” of patients and performed “treatment” without sufficient medical and research justification. These examinations constituted severe sexual misconduct and assault of hundreds of children.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of the State of Florida. Plaintiff brings this Complaint anonymously because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and further psychological damage if his identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, ROCKEFELLER UNIVERSITY, (hereafter, "RU"), is a private graduate university with a principal place of business at 1230 York Avenue, New York, New York 10065. RU operates, owns, controls, maintains and/or manages The Rockefeller University Hospital ("RUH") f/k/a Hospital of the Rockefeller Institute, also located in New York City and is a division of RU. RU is a citizen and resident of the State of New York.

3. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

4. Personal jurisdiction lies over Defendant as it is present and domiciled in the State of New York.

5. Venue of this action lies in New York County and a substantial part of the events or omissions giving rise to the claim occurred in New York County or the Defendant resides in New York County.

BACKGROUND AND SEXUAL ASSAULT OF THE PLAINTIFF

6. Dr. Archibald was a former professor and senior physician of RU and RUH from approximately 1940 to 1982. Dr. Archibald studied childhood growth and sexual maturity. He ran an endocrine clinic within RUH in which he treated pediatric patients who had growth issues.

7. In approximately 1972, when Plaintiff was approximately eleven (11) years old, Plaintiff was brought to RU/RUH by his parents for treatment with Dr. Archibald for growth hormone therapy/study.

8. Following the initial visit, Dr. Archibald continued to treat Plaintiff regularly for approximately three (3) years under the pretext of monitoring Plaintiff's progress; however, during the visits, Dr. Archibald regularly sexually assaulted and abused Plaintiff.

9. Dr. Archibald's sexual assault of Plaintiff included, but was not limited to, inappropriately fondling Plaintiff's penis without sufficient medical and research justification, masturbating Plaintiff without sufficient medical and research justification, taking Polaroid photographs of Plaintiff without sufficient medical and research justification and collecting semen samples from Plaintiff without sufficient medical research justification.

10. The acts of sexual assault and abuse of Plaintiff by Dr. Archibald took place on the premises of RU and/or premises affiliated, owned, operated, maintained, and/or controlled by RU.

NOTICE - FORESEEABILITY

11. Upon information and belief, Dr. Archibald was at all relevant times a serial sexual predator who sexually abused multiple boys during his employment by and/or affiliation with RU.

12. At all times relevant and material hereto, RU, through its employees and agents, knew or should have known that Dr. Archibald, under its supervision and control, was sexually inappropriate and assaulting minor male patients.

13. At all times relevant and material hereto, various staff members, including nurses, doctors, and other RU/RUH employees, agents, and officials were aware of Dr. Archibald's medically unjustified procedures and examination of minor male patients.

14. Upon information and belief, in 1961, the President of RU was made aware of an investigation conducted into Dr. Archibald by the New York City District Attorney's Office in relation to treatment of two minor patients, prompted by a complaint.

15. Upon information and belief, the physician-in-chief from 1960-1974 received several complaints from patients, family members of patients or staff about Archibald's examinations of patients' genitals. The physician-in-chief knew of Dr. Archibald's medically unjustified practices.

16. In May 23, 2019, Debevoise & Plimpton LLP prepared the "Report on the Investigation of Dr. Reginald Archibald" at the request of RU. The report expressly acknowledges that Dr. Archibald engaged in sexual misconduct while conducting examinations of his patients. Such misconduct included (i) taking inherently invasive photographs; (ii) fondling patients' genitalia while taking measurements; (iii) fondling or paying inappropriate attention to patients' genitalia while posing them for photographs; (iv) pulling male patients' genitalia when they had erections; (v) touching patients without medically or scientifically relevant reasons when they were sitting nude on his lap; and (vi) brushing up against patients' genitals with his face. Moreover, the May 23, 2019 report indicated that Dr. Archibald took semen samples from patients without sufficient medical or research justifications. The report found that these actions constituted sexual abuse rather than a legitimate medical or research procedure.

17. Despite receiving credible allegations against Dr. Archibald of sexual assault, RU acted to conceal these allegations in an effort to avoid scandal and accountability.

18. At all relevant times, it was reasonably foreseeable to RU that Dr. Archibald would commit acts of child sexual abuse or assault on a child.

19. At all relevant times, RU knew or should have known that Dr. Archibald was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

20. With such actual or constructive knowledge, RU provided Dr. Archibald unfettered access to Plaintiff and gave him the opportunity to commit foreseeable acts of child sexual abuse or assault.

DUTY

21. At all times relevant and material hereto, RU held itself out as a hospital and medical research center which maintained standards consistent with acceptable medical practices and protocols.

22. At all times relevant and material hereto, RU approved and/or sanctioned Dr. Archibald medical research and provided Dr. Archibald with the facilities, staff and other instruments to treat and examine patients such as Plaintiff.

23. At all times relevant and material hereto, RU knowingly and willingly placed patients such as Plaintiff in the care, custody and control of Dr. Archibald.

24. At all times relevant and material hereto, RU knowingly and willingly referred patients such as Plaintiff to Dr. Archibald for medical treatment and examination.

25. At all times relevant and material hereto, RU and Plaintiff were in a special relationship, in which RU owed Plaintiff a duty of reasonable care to protect him from foreseeable harm.

26. At all times relevant and material hereto, RU and Dr. Archibald were in a special relationship of employer-employee, in which RU owed a duty to control the acts and conduct of Dr. Archibald to prevent foreseeable harm.

27. RU owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while he was under the care, custody or in the presence of RU. RU's duties encompassed using reasonable care in the retention, supervision and hiring of Dr. Archibald and the duty to otherwise provide a safe environment for Plaintiff.

28. RU had a duty to exercise reasonable care in the training of physicians, nurses, employees, officials and staff in the prevention of sexual abuse and protection of the safety of patients in its care.

29. RU had a duty to establish and implement policies and procedures in the exercise of reasonable care for the prevention of sexual abuse and protection of the safety of the patients in its care.

BREACH

30. Defendants breached their duties by (i) failing to protect Plaintiff from sexual assault and lewd and lascivious acts committed by their agent and employee; (ii) failing to establish policies and procedures that were adequate to protect the health, safety and welfare of children and protect them from sexual abuse; (iii) failing to implement and enforce policies and procedures that were adequate to protect the health, safety and welfare of children and protect them from sexual abuse; (iv) hiring, retaining and/or failing to supervise Dr. Archibald when they knew or should have known that he posed a substantial risk of harm to children; and (v) failing to adequately monitor and supervise children on the premises of RU.

31. At all relevant times, Defendant had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

32. Defendant concealed its knowledge that Dr. Archibald was unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by their employees.

33. Defendant failed to warn Plaintiff and similarly situated individuals that they were at risk of sexual abuse.

NATURE OF CONDUCT ALLEGED

34. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53); and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

35. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendants acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Dr. Archibald, to permit Dr. Archibald unfettered access to children.

COUNT I - NEGLIGENCE **(against Defendant RU)**

36. Plaintiff repeats and realleges Paragraphs 1 through 35 above.

37. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

38. Defendant's acts and conduct showed a reckless or willful disregard for the safety

and well-being of Plaintiff and other children.

WHEREFORE, Plaintiff demands Judgment against Defendant for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a Jury Trial in this action.

Dated: New York, New York
November 14, 2019

Respectfully submitted,

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